

REMARKS

Claims 1-66 are pending in the application.

Claims 1-66 have been rejected.

Claims 35-45 have been cancelled.

Formal Matters

Appreciation is expressed for the telephonic interview conducted on June 3, 2009 between Examiner Kevin Bates and Shawn Doman. During the interview, the Linville reference was discussed with regard to the rejection of independent claim 1. During the interview, the Examiner agreed that the cited references fail to expressly teach the limitation “the client determines that the client is receiving data at a rate exceeding a set threshold.” However, the Examiner indicated a belief that the claims may still not allowable but did not withdraw the present rejection or the finality of the present rejection. Based on the fact that the cited references fail to disclose each limitation of claim 1, and for at least for reasons presented below, Applicants respectfully submit that independent claim 1 and all claims depending therefrom are allowable (as well as claims 18, 46, and 54, which contain substantially similar limitations, and all claims depending therefrom) and request notice to that effect. In the alternative, Applicants respectfully request that the Examiner withdraw finality and reopen prosecution so that the Applicants may have a chance to respond to any further rejection the Examiner may make.

Rejection of Claims under 35 U.S.C. § 103(a)

Claims 1-66 stand rejected under 35 U.S.C. § 103(a) as purportedly being unpatentable over U.S. Publication No. 2003/0076781 issued to Enomoto (“Enomoto”) in view of U.S. Patent No. 6,026,075 issued to Linville (“Linville”). Applicants note that while claims 6, 7, 16, 17, 22, 23, 26, 32-34, 39, 44, 45, 49, 53, 57, 48, and 66 are included in this section, Knightly and/or Blackard are cited in the rejection of these claims. Applicants respectfully traverse this rejection.

In order for a claim to be rendered invalid under 35 U.S.C. §103, the subject matter of the claim as a whole would have to be obvious to a person of ordinary skill in the art at the time the invention was made. *See* 35 U.S.C. §103(a). This requires: (1) the reference(s) must teach or suggest all of the claim limitations; (2) there must be some teaching, suggestion or motivation to combine references either in the references themselves or in the knowledge of the art; and (3) there must be a reasonable expectation of success. *See* MPEP 2143; MPEP 2143.03; *In re Rouffet*, 149 F.3d 1350, 1355-56 (Fed. Cir. 1998).

Applicants respectfully submit that the proposed combination of Enomoto and Linville fails to disclose each limitation of claim 1. As acknowledged by the Examiner in the interview referenced above, Linville fails to teach or suggest the limitation that “the client determines that the client is receiving data at a rate exceeding a set threshold.” The Office Action mailed March 24, 2009 (“Office Action”) admits that this feature is not taught by Enomoto. Office Action, p. 3. Applicants respectfully submit that not only is this feature is not disclosed by either Enomoto or Linville, but this feature is also not obvious in light of any proposed combination of the two.

Neither Enomoto nor Linville is concerned with congestion in a client of a MAC device. Enomoto is concerned with detecting congestion in a congestion control node, not in a client. *See* Enomoto, Abstract. Linville is concerned with congestion on a network link. *See* Linville, Abstract. The cited sections of both of these references fail to disclose any capability of detecting whether a client of a MAC device is receiving data at too great a rate.

Furthermore, neither Enomoto nor Linville discloses a MAC device having the functionality to receive information from a client of the MAC device, let alone whether the information specifically indicates that the client is receiving too much data. The Office Action suggests a correlation between Enomoto’s congestion control node and the claimed MAC device. Office Action, p. 2. Even if the two were comparable, a point Applicants do not concede, the cited portions of Enomoto fail to disclose that the congestion control node has the capability to receive information from a client of the congestion control node that the client is receiving too much data. The cited sections of

Linville also fail to disclose a device having such capability. Accordingly, Applicants respectfully submit this feature is not obvious in light of any proposed combination of Enomoto and Linville.

On the other hand, the claims provide for a MAC device capable of receiving information from a client of the MAC device, wherein the information indicates that the client is receiving data at too great a rate. The MAC device can then form a message with this client generated information and transmit the message to a second MAC device. In this way, information generated by a client regarding the client's data handling capabilities is incorporated into the data transmission rate adjustment scheme of a network. The cited portions of Enomoto and Linville, considered alone or in combination, fail to disclose such functionality.

The remarks made above regarding independent claim 1 apply with equal force to independent claims 18, 46, and 54, which contain substantially similar limitations. For at least the foregoing reasons, Applicants respectfully request the Examiner's reconsideration and withdrawal of the rejections to these claims, as well dependent claims 2-17, 19-34, 47-53, and 55-66 (which depend from respective independent claims) and an indication of the allowability of same.

Claims 2-3, 5, 14, 19-20, 24-25, 38, 47-48 and 55-56 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Enomoto in view of Blackard, in further view of U.S. Publication No. 2003/0163593 naming Knightly as inventor ("Knightly"). Applicants respectfully traverse this rejection. Applicants respectfully submit that these claims are allowable for at least the foregoing reasons. Accordingly, Applicants respectfully request the Examiner's reconsideration and withdrawal of the rejections to these claims and an indication of the allowability of same.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5092.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicants hereby petition for such extensions. Applicants also hereby authorize that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,

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